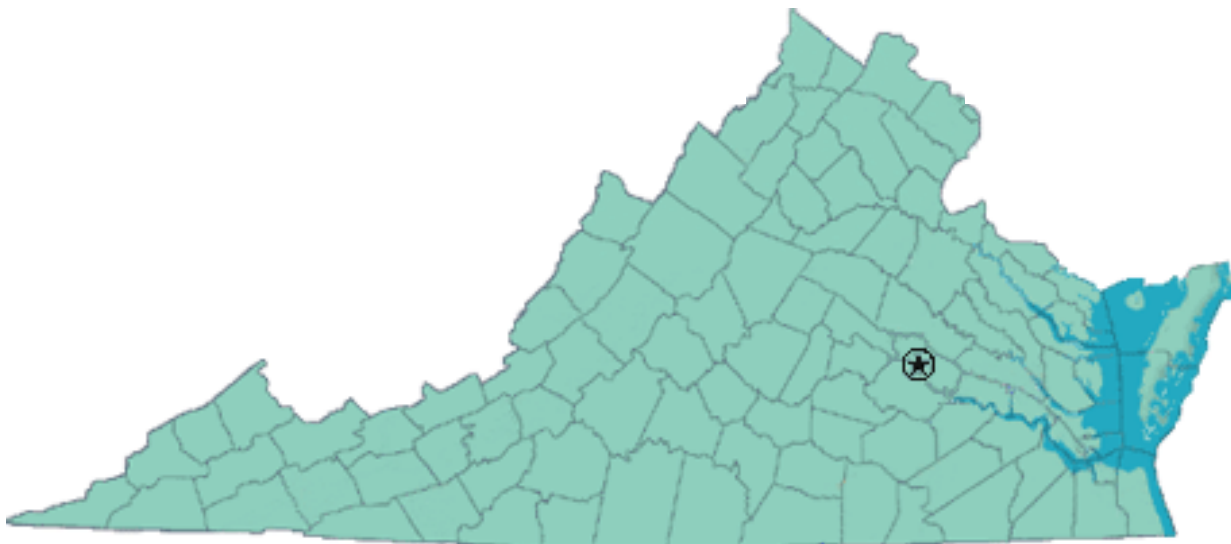


# Economic Development Access Program Guide

Administered by the  
Virginia Department of Transportation  
Local Assistance Division



For further information, contact:

Residency Administrator (or other VDOT designee)  
Virginia Department of Transportation

(See local telephone directory)

or


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1401 East Broad Street  
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<http://www.virginiadot.org/business/local-assistance.asp>

**VIRGINIA DEPARTMENT OF TRANSPORTATION**

**LOCAL ASSISTANCE DIVISION**

**MEMORANDUM**

<b>Subject: ECONOMIC DEVELOPMENT ACCESS PROGRAM</b>		<b>Number: LAD 49-07</b>
Specific Subject: GUIDE FOR THE ECONOMIC DEVELOPMENT ACCESS PROGRAM per Commonwealth Transportation Board Policy Adopted June 15, 2006 and Code of Virginia § 33.1-221, as amended.		Date: July 1, 2007
		Supersedes: SR-49-02, dated April 3, 2002
Directed To: LOCAL GOVERNMENTS DISTRICT ADMINISTRATORS RESIDENCY ADMINISTRATORS URBAN PROGRAM MANAGERS	Signature:  Director, Local Assistance Division	

This revised document was prepared to incorporate amendments to Section 33.1-221 of the *Code of Virginia* as reenacted July 2006 and the Commonwealth Transportation Board's new Economic Development Access Fund Policy approved at its meeting on June 15, 2006.

**All previous instructions regarding the administrative procedures for industrial access projects are hereby superseded.**

# ECONOMIC DEVELOPMENT ACCESS PROGRAM GUIDE

## TABLE OF CONTENTS

	<u>PAGE</u>
<b>Frequently Asked Questions .....</b>	<b>i</b>
<b>I. PURPOSE:.....</b>	<b>1</b>
<b>II. DEFINITIONS:.....</b>	<b>1</b>
A. ADEQUATE ACCESS .....	1
B. BASIC EMPLOYER .....	1
C. QUALIFYING ESTABLISHMENTS .....	2
D. QUALIFYING INVESTMENT .....	2
E. PROJECT COST .....	3
F. BOND OR OTHER ACCEPTABLE SURETY.....	3
<b>III. ROLES and RESPONSIBILITIES:.....</b>	<b>4</b>
A. THE QUALIFYING ESTABLISHMENT.....	4
B. THE LOCAL GOVERNMENT .....	4
C. THE VDOT MANAGER .....	7
D. THE DISTRICT ADMINISTRATOR.....	7
E. THE DIRECTOR OF LOCAL ASSISTANCE .....	7
F. THE COMMONWEALTH TRANSPORTATION BOARD .....	7
<b>IV. PROJECT IMPLEMENTATION: .....</b>	<b>8</b>
A. THE STATE ENVIRONMENTAL REVIEW PROCESS (SERP) .....	8
B. VDOT-ADMINISTERED PROJECTS .....	9
C. LOCALITY-ADMINISTERED PROJECTS .....	10
D. TIME FRAME FOR APPLICATION PROCESS.....	11
<b>Figure 1 – Flow Chart.....</b>	<b>12</b>
<b>V. LIMITATIONS:.....</b>	<b>13</b>
A. MAXIMUM ALLOCATION.....	13
B. FUNDS NOT TO BE ANTICIPATED.....	13
C. TIME LIMITS FOR NAMED PROJECTS .....	13
D. TIME LIMITS FOR BONDED PROJECTS.....	14
E. IMPROVEMENTS TO EXISTING ROADS .....	14
F. TOWNS.....	15
<b>VI. ACCEPTANCE INTO SYSTEM: .....</b>	<b>15</b>

# ECONOMIC DEVELOPMENT ACCESS PROGRAM GUIDE

## LIST OF APPENDICES

### APPENDIX

Statutory Authority .....	A
Commonwealth Transportation Board Policy .....	B
Sample Resolution Formats .....	C
Project For Named Qualifying Establishment .....	C - 1
Bonded Project.....	C - 2
Towns Maintaining Own Streets .....	D
Acknowledgment of the Virginia Department of Transportation's.....	E
Environmental Process for State-Funded Projects.....	F
Types of Surety .....	G
Irrevocable Standby Letter of Credit .....	G - 1
Surety Bond .....	G - 2
Outline/Checklist .....	H
Qualifying Establishment / Investment Documentation Cover Sheet .....	I

## FREQUENTLY ASKED QUESTIONS

How do I apply for Economic Development Access funds?

Refer to page 4, paragraph III.B.

How often and when does the CTB meet?

Refer to page 7, paragraph III.F.

How long does it take for a project to be approved?

Refer to page 12, paragraph IV. D.

When will the Economic Development Access funds be available?

Refer to page 7, paragraph III.F.

What types of establishments are eligible for Economic Development Access funds?

Refer to page 2, paragraph II.C.

How much funding is available for an Economic Development Access Project?

Refer to page 13, paragraph V.A.

What if the maximum allocation is not enough?

Page 13, paragraphs V.A. and V.B.

When can we expect these funds to be spent on a project?

Refer to pages 10 and 11, paragraphs IV.B.6. and IV.C.5.

What are eligible costs?

Refer to pages 1 and 3, paragraphs II.A. and II.E.

What type of documentation is needed to verify capital investment?

Refer to page 2, paragraph II.D.

How long is the bonded period and when does it start?

Refer to page 5, paragraph III.B.2.

What are acceptable types of surety?

Refer to page 3, paragraph II.F.

When will surety have to be provided?

Refer to pages 9 and 11, paragraphs IV.B.5. and IV.C.4.

When will the road be accepted for maintenance?

Refer to page 16, paragraph VI.

How can the amount of surety be reduced?

Refer to page 5, paragraph III.B.2.

## ECONOMIC DEVELOPMENT ACCESS PROGRAM GUIDE

### I. PURPOSE:

The Economic Development Access Program is a state-funded incentive program intended to assist localities in attracting sustainable businesses that create jobs and generate tax revenues within the locality. The program makes funds available to localities for road improvements needed to provide adequate access for new or substantially expanding qualifying establishments. Economic Development Access funds are allocated by the Commonwealth Transportation Board (CTB) in accordance with its policy revised on June 15, 2006 (see Appendix B). These funds may be used for financing the construction or improvement of secondary or local system roads within all counties and cities and certain towns that are part of the Urban System, hereinafter referred to as eligible localities.

This guide describes the requirements, limitations and procedures used in obtaining Economic Development Access funds.

### II. DEFINITIONS:

#### A. Adequate Access

“Adequate Access” means a road from the primary entrance of the economic development site to the nearest adequate publicly maintained road. Economic Development Access funds cannot be used to construct or improve roads on a privately owned site. (Please note that these funds were previously limited to providing or improving access no further than 100 feet beyond the closest property line of a specific eligible parcel. This ‘100-foot rule’ no longer applies.)

Adequate access may require the construction of a new roadway, or the improvement of an existing road (see page 14, paragraph V.E.), or a combination of the two. When a new roadway is requested, funding is based on the most economical access to serve the site. Standards for a new or improved roadway will vary according to the type and amount of traffic it is projected to accommodate. (Please refer to the Virginia Department of Transportation’s (VDOT) Road Design Manual for guidance on these standards.)

Any parcel with direct access to an adequate publicly maintained road is deemed to have access by virtue of its location and is ineligible for funding to construct a new roadway. Under certain conditions, however, a qualifying establishment on an abutting parcel may justify improvement of the existing road.

#### B. Basic Employer

“Basic Employer” as defined in § 2.2-5100 of the *Code of Virginia* means employment that brings new or additional income into Virginia and adds to the gross state product. The Virginia Economic Development Partnership (VEDP) in consultation with the

Virginia Department of Business Assistance (VDBA) will determine if a facility meets these requirements.

### C. Qualifying Establishments

“Qualifying Establishments” include manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other qualifying establishments that also meet basic employer criteria as determined by the VEDP in consultation with the VDBA.

Excluded from consideration are the following establishments: schools, hospitals, libraries, airports, armories, shopping centers, speculative office buildings, apartment buildings, professional offices, residential developments, churches, hotels, motels, government installations or similar facilities, whether public or private.

### D. Qualifying Investment

“Qualifying Investment” or “Eligible Capital Outlay” represents the cost to the qualifying establishment of the land, the building, and newly purchased manufacturing or processing equipment. Costs for items such as office equipment, desktop office computer systems, manufacturing equipment transferred from another plant, and rolling stock are ineligible. Also ineligible are legal fees, taxes, recording fees, interest and similar type expenses. Capital costs incurred by the qualifying establishment more than six months prior to the date of resolution of the governing body will normally be disallowed.

The establishment of qualifying investment requires documentation such as deeds, purchase orders, cancelled checks, executed “firm contracts,” and other documentation deemed necessary to validate capital investment expenditures. A “firm contract” means that there is a binding construction contract between the property-owning qualifying establishment and a general contractor to construct a building or buildings for new or expanding eligible facilities. Construction of a building or other facilities by a qualifying establishment acting on its own behalf does not constitute the necessary arm’s length contractual obligation. In such instances it is necessary for the qualifying establishment to complete the building and have an independent appraiser (acceptable to VDOT) establish the eligible capital investment upon completion before investment credit can be determined and program funds are authorized for expenditure. Under this circumstance, it may be better to request a bonded project to allow for the time necessary to determine the amount of eligible capital investment.

Lease arrangements for land and buildings, as opposed to direct property ownership by a qualifying establishment, may require additional documentation to establish the amount of eligible capital investment. Further, the inclusion of a tenant’s option to purchase does not constitute tenant’s capital investment. A qualifying lease must be for a term of no less than five years, must require payments equivalent to those for comparable properties, and must include a substantial financial penalty for default or early termination by the leasing qualifying establishment.



If a lease or lease-purchase agreement is considered acceptable, the qualifying investment will be the owner's documented cost to develop the leased premises, along with any eligible items installed by the leasing qualifying establishment. If the lease does not meet the criteria for acceptance, no capital outlay credit can be established by the leasing qualifying establishment.

Appendix I, included in this guide, is intended as a cover sheet to assist the locality and VDOT in compiling documentation of qualifying investment and must accompany all submittals for documenting investment.

#### E. Project Cost

"Project Cost" means the allowable costs for which Economic Development Access Program funds may be utilized. This includes the reasonable costs of preliminary engineering and surveying associated specifically with the project design and actual construction cost of a roadway built to VDOT standards for accommodating the projected traffic. Any pedestrian or bicycle facility deemed necessary for the project is eligible for funding. Excluded are items such as environmental studies and permits, obtaining right-of-way and relocation of utilities. Optional roadway features other than those covered by this program may be included in a project, provided that the costs of these features are borne by others.

Costs incurred (i.e., paid items or those for which a contract or purchase order has been executed) prior to allocation by the CTB are not reimbursable.

#### F. Bond or Other Acceptable Surety

"Bond or Other Acceptable Surety" means a legally binding financial instrument guaranteeing the return of state Economic Development Access Program funds as a result of a locality's inability to meet the terms of the allocation as outlined in the CTB's resolution approving the project and funding.

These include:

- a surety bond issued by a commercial bonding or insurance company
- an irrevocable letter of credit established with a bank or other financial institution

The purpose of such instrument is to provide a means for VDOT to recover the funds expended on a bonded project in the event sufficient capital outlay is not documented within the period for establishing qualifying investment. The length of this period is five years, beginning on the date of the CTB's resolution approving the project and allocation, and may be referred to as the "bonded period." The conditions of any such device must authorize VDOT to collect the appropriate amount within 30 days of the end of the bonded period or any time after that if other suitable arrangements for payment have not been made by the locality. The bond or other device must be provided by the locality. See Appendix G-1 and

Appendix G-2 for examples of approved formats of surety devices.

### III. ROLES and RESPONSIBILITIES:

The roles and responsibilities of each party are described in the following sections and illustrated in “Figure 1 – Flow Chart” on page 12.

#### A. The Qualifying Establishment

After the qualifying establishment has made a decision to locate on a particular site, the qualifying establishment’s representatives should then provide the following to the locality with a copy to the VDOT designee (hereinafter referred to as the “VDOT manager”). The VDOT manager is usually the Residency Administrator or Urban Program Manager.

1. A preliminary plan showing the entire parcel of land, and the locations of: the building, other major site features, the proposed entrance, the proposed access road, and existing public roads and highways in the immediate vicinity of the site. If the site is part of an economic development subdivision, all parcels must be delineated and numbered.
2. A letter of request to the appropriate local governing body on its corporate letterhead incorporating the following information:
  - a. Intent to build or expand on a designated site
  - b. Description and location of the site
  - c. Target date for building construction
  - d. Target date for beginning operation
  - e. Capital investment planned on the site, itemized
  - f. Narrative of establishment’s operation
  - g. The number of new jobs to be created
  - h. Access road improvements requested
  - i. Estimates of the numbers of additional employee vehicles and truck traffic which will use the access road on an average business day

It is also recommended that the locality forward a copy of this letter to the Executive Director, Virginia Economic Development Partnership, Post Office Box 798, Richmond, Virginia 23218-0798 and to the Director, Existing Business Services, Virginia Department of Business Assistance, Post Office Box 446, Richmond, Virginia 23218-0446 since concurrence by these offices will be needed prior to allocation of funding .

#### B. The Local Government

The local government serves as the coordinator for all Economic Development Access applications. After reviewing the application and consulting with the VDOT manager, the locality will officially request the Economic Development Access allocation

with the appropriate locality resolution. Sample resolutions are found in Appendix C.

If Economic Development Access funds are requested to construct a new road (as opposed to improving an existing public road), please see page 1, paragraph II.A. for a discussion of whether the parcel in question is likely to qualify. For improvements to existing roads, please refer to page 14, paragraph V.E.

*For Economic Development Access projects, the locality will be the responsible party for all contingencies, which generally include the execution of an agreement with VDOT, right of way acquisition, provision of appropriate surety, obtaining environmental permits, implementation of environmental commitments identified through the State Environmental Review Process (SERP) and ineligible costs associated with the access project.*

1. Regular Projects (where an existing qualifying establishment is expanding or a new named qualifying establishment is under firm contract to build):

Eligible localities may request funding for a road to a qualifying establishment by resolution directly to the VDOT manager of the Virginia Department of Transportation in that locality. In towns that do not maintain their own road system, the request by a Town Council should be concurred in by a separate resolution of the County Board of Supervisors.

Allocations for road construction are limited to one-tenth of the qualifying capital investment. If the amount of qualifying investment is not at least ten times the estimated cost of the road construction, the resolution should state that the locality will assure the provision of the construction funds not justified by the capital investment. Project costs in excess of the allocation will be the responsibility of the locality. No funds administered by VDOT may be utilized in providing any such supplemental financing for a new road.

For new roads, the resolution should state that right of way and utility relocation will be provided at no cost to VDOT, and that the road will be accepted into the appropriate road system for maintenance. The identity of the qualifying establishment is also to be specified. See Appendix C-1 for a suggested resolution.

2. Bonded Projects (where no establishment is under firm contract to build or when the identity of the qualifying establishment is held confidential):

When an eligible locality desires to have an Economic Development Access road constructed in anticipation of a commitment by a qualifying establishment to locate, such a request may be made as above. However, it will be necessary that the governing body guarantee to the CTB that a bond or other acceptable surety will be provided to cover the cost of the road which is not yet justified by qualifying investment. Project costs in excess of the allocation will be the responsibility of the locality. For new roads, the resolution should assure that

right of way and utility relocation will be provided at no cost to VDOT, and that the road will be accepted into the appropriate road system for maintenance.

The resolution of the governing body will also clearly indicate that, if a qualifying establishment is not constructed or under firm contract within the five-year bonded period, program fund expenditures unwarranted by qualified capital investment shall be remitted to VDOT or the required surety shall be forfeited. During the term of the surety, the locality may request a partial reduction in the value of the surety. This reduction would be based on the amount of qualified capital investment properly documented. If only partial qualifying investment occurs on appropriate site(s) within the time limit of the bond, proportional credit against the bond will be granted for that partial investment.

The time limit for bonded projects will be five years from the date the CTB approves by resolution the project and funding allocation. Localities are encouraged to address any required CTB contingencies and initiate construction as soon as possible to maximize the available time to attract qualifying investment. See Appendix C-2 for a suggested locality resolution.

*While the bonded project process allows an excellent opportunity for localities to receive an allocation and build an access road that may attract qualifying establishments, it also represents a risk and localities should consider the financial impacts if they are unable to attract qualifying establishments with sufficient capital investment within the five-year bonded period.*

If a locality does not meet the terms of the bonded project and is required to return funds to VDOT, the locality may then request an additional 24 months to establish qualifying capital investment in accordance with the CTB policy. This flexible provision was added by the CTB in the June 16, 2006 update for administering these funds to provide an additional opportunity to localities to attract qualifying establishments. To take advantage of this option, the locality must first return any funds due to VDOT for fund expenditure not justified by investment and then make the request in writing to the Director of the Local Assistance Division that the CTB consider providing the additional 24 month period to document qualifying investment. If approved, the CTB may return up to one half of the funds returned by the locality upon establishment of the appropriate amount of qualifying capital investment. The additional 24-month period extension is based on the expiration of the original five-year period.

VDOT will recommend to the CTB that consideration of new access fund allocations be prohibited for any locality with an outstanding debt for a bonded access project until that debt is satisfied. "Outstanding debt" is represented by the locality's obligation to return Economic Development Access funds expended on a project unwarranted by sufficient qualifying investment established within the five-year bonded period.

### 3. Regional Industrial Facility Authority Projects

A locality may request Economic Development Access funds on behalf of a regional industrial authority. If an eligible site is owned by such a regional industrial facility authority, as defined in § 15.2-6400 of the *Code of Virginia*, funds may be allocated for construction of an access road project to that site without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction, with the same funding limitations as prescribed for other individual projects. The host locality will be required to provide the required surety if a bonded project allocation is requested and execute the local-state agreement.

#### C. The VDOT Manager

The VDOT manager will assist the locality in preparing a resolution requesting funding, in preparing sketches and cost estimates for requested road improvements, in initiating the SERP process, and in assembling a file with information necessary for review by other offices of VDOT, the VEDP and the VDBA. This assembly of information will be forwarded to the District Administrator with a recommendation regarding the application.

#### D. The District Administrator

The District Administrator or designee will verify road design standards and cost estimates, and will forward the assembly of information with a recommendation to the Director of the Local Assistance Division.

#### E. The Director of Local Assistance

The Director of Local Assistance will coordinate review of the application between the VEDP, the VDBA and appropriate VDOT offices. A site visit may be scheduled if deemed necessary. A recommendation will be requested from the VEDP and VDBA indicating whether the establishment qualifies or the development constitutes an appropriate use of funds and whether it recommends that an allocation be made. After all prerequisites have been met for a viable project the Director of Local Assistance may recommend approval to the CTB.

#### F. The Commonwealth Transportation Board

The CTB, upon consideration of a complete application, may allocate funds for the requested access project. Contingencies which must be satisfied will be specified in the language of the CTB's allocation resolution. This allocation is for the exclusive purpose of financing the eligible costs actually incurred in constructing the specific access facility. The date of the CTB allocation is the date the CTB approves the project and funding amount by resolution. The CTB usually meets the third Thursday of each month and project information must be completely reviewed and submitted to the Local

Assistance Division for inclusion in the agenda approximately 30 days prior to the meeting.

Economic Development Access Program funds will be authorized for expenditure or reimbursement when all contingencies of the CTB's allocation have been satisfied.

#### IV. PROJECT IMPLEMENTATION:

##### A. The State Environmental Review Process (SERP)

A memorandum of agreement (MOA) was executed by the Secretary of Natural Resources and the Secretary of Transportation on July 31, 1991. This document requires that the state natural and historic resource agencies be provided an opportunity to comment on all state-funded road projects at the earliest stage of development. The SERP ensures that state resource agency views and interests will be considered in the project development process from concept through construction. The MOA for SERP was created pursuant to § 10.1-1188 of the *Code of Virginia*, (Article 2, Environmental Impact Reports of State Agencies).

Projects developed under the Economic Development Access Program often must address a much more compressed development schedule than regular construction projects, in order to accommodate a locality's or qualifying establishment's desire for a facility or site to be accessed and eventually operational. The SERP process will take between 60 and 90 days to complete. Therefore, the time necessary for completion of the SERP and any environmental commitments or regulatory clearances that may result from this review must be anticipated in the project's development schedule, often prior to the CTB's approval of, and allocation to, an Economic Development Access project. For this reason, the locality and VDOT manager must work together in determining the viability of each proposed Economic Development Access project with respect to the development schedule proposed for the project. The VDOT manager may initiate the SERP process once the locality provides the location information and requests SERP initiation. The locality will be notified once the SERP is complete and informed of any environmental commitments or regulatory clearances necessary.

Also, please refer to Appendix F, entitled "Environmental Process for State-Funded Projects" within this guide. This document outlines the responsibilities involved with the administration of the SERP for state funded projects. Where projects are to be administered by the locality requesting Economic Development Access Program funds, the locality is directed to the [Guide to Local Administration of Virginia Department of Transportation Projects](#). *The agreement must be fully executed by the locality and VDOT prior to the locality entering into any contract for project work and before initiating any land disturbance activities that would impact the area of the proposed access road project.*

Additional information regarding environmental requirements can be found on the following VDOT website:

[www.virginiadot.org/business/environmental\\_requirementsAccessRequirements.asp](http://www.virginiadot.org/business/environmental_requirementsAccessRequirements.asp)

B. VDOT-Administered Projects

1. When funding for an Economic Development Access project is approved by the CTB, the project is deemed viable. However, it is subject to the same rules of design, right of way acquisition, environmental review, scheduling for advertisement, bidding, and construction as other projects administered by VDOT.
2. **The VDOT** manager provides documentation of the dedicated right of way for the project to the District Right of Way Manager. The District forwards this information and its recommendation to VDOT's Right of Way and Utilities Division Director, who certifies that right of way and utility adjustments for the project have been obtained at no cost to the Economic Development Access Program fund. The provision of unencumbered right of way by the locality includes completion of any extensive environmental studies and required mitigation of existing environmental conditions.
3. The Local Assistance Division prepares a local-state agreement between a county, city, or town and VDOT if: 1) the project requires matching funds; 2) the project includes ineligible project costs; or, 3) the project requires the provision of a surety instrument. The local-state agreement specifies responsibilities and payment of costs. Such agreement is subject to review and concurrence by the Office of the Attorney General prior to its execution by a local governing body and VDOT management.
4. The locality provides payment to the VDOT manager for any required matching funds, ineligible project costs, or eligible projects in excess of the Economic Development Access allocation prior to the project being authorized for construction. The VDOT manager forwards this payment to the Local Assistance Division, which will ensure that it is credited to the project.
5. The local government provides documentation to the VDOT manager that a qualifying establishment has made firm commitment to locate on an eligible site (executed construction contract) and an official letter from the qualifying establishment's chief financial officer outlining capital expenditures as specified in this document under "Qualifying Investment" (see paragraph II.D.).

- or -

If bonded, the local government shall provide the required surety to the VDOT manager. The VDOT manager forwards the surety to the Local

Assistance Division.

6. The expenditure of funds for the project may be authorized by VDOT only after all contingencies of the Transportation Board's resolution have been met.
7. A VDOT-administered project must be authorized with all necessary funding in place before the project may be advertised or constructed.
8. Once a project is authorized, the VDOT manager will coordinate all aspects of the construction of VDOT-administered projects.

C. Locality-Administered Projects

1. When funding for an Economic Development Access project is approved by the CTB, the project is deemed viable. However, it is subject to the same rules of design, right of way acquisition, environmental review, scheduling for advertisement, bidding, and construction as described in the [Guide for Local Administration of Virginia Department of Transportation Projects](#). Projects administered under this program are approved by the CTB at the time of the allocation by resolution.
2. The Local Assistance Division prepares a local-state agreement between a county, city, or town and VDOT if the locality wishes to administer the Economic Development Access project itself. The local-state agreement requires that the locality follow state procurement regulations in the administration of the project's construction, and specifies responsibilities, schedules, and payment of costs. VDOT strongly recommends its standard project administration agreement be used for all locality-administered projects. If a custom agreement is used such agreement is subject to review and concurrence by the Office of the Attorney General prior to its execution by a local governing body and VDOT management. The local-state agreement is the contract that authorizes the locality to perform any work that can be reimbursed from VDOT funds and must be executed prior to authorizing work. Any cost incurred or contract executed by a local governing body or its agent, before an agreement is signed by all parties, is the responsibility of the local governing body, unless otherwise agreed to by the Director of Local Assistance.
3. The VDOT manager provides documentation of the dedicated right of way for the project to the District Right of Way Manager. The District forwards this information and its recommendation to VDOT's Right of Way and Utilities Division Director, who certifies that right of way and utility adjustments for the project have been obtained at no cost to the Economic Development Access Program fund. The provision of unencumbered right of way by the locality includes completion of any extensive environmental studies and



required mitigation of existing environmental conditions.

4. The local government provides documentation to the VDOT manager that a qualifying establishment has made firm commitment to locate on an eligible site (executed construction contract) and an official letter from the qualifying establishment's chief financial officer outlining capital expenditures as specified in this document under "Qualifying Investment" (see paragraph II.D.).

- or -

If bonded, the local government shall provide the required surety to the VDOT manager. The VDOT manager will forward the surety to the Local Assistance Division.

5. The expenditure of funds for the project will be approved by VDOT only after all contingencies of the Transportation Board's resolution have been met.

A locality-administered project must be authorized with funding approved for expenditure before VDOT will reimburse a locality for eligible costs attributed to the construction of the project. Appropriate documentation of costs and billing information must be provided by the locality.

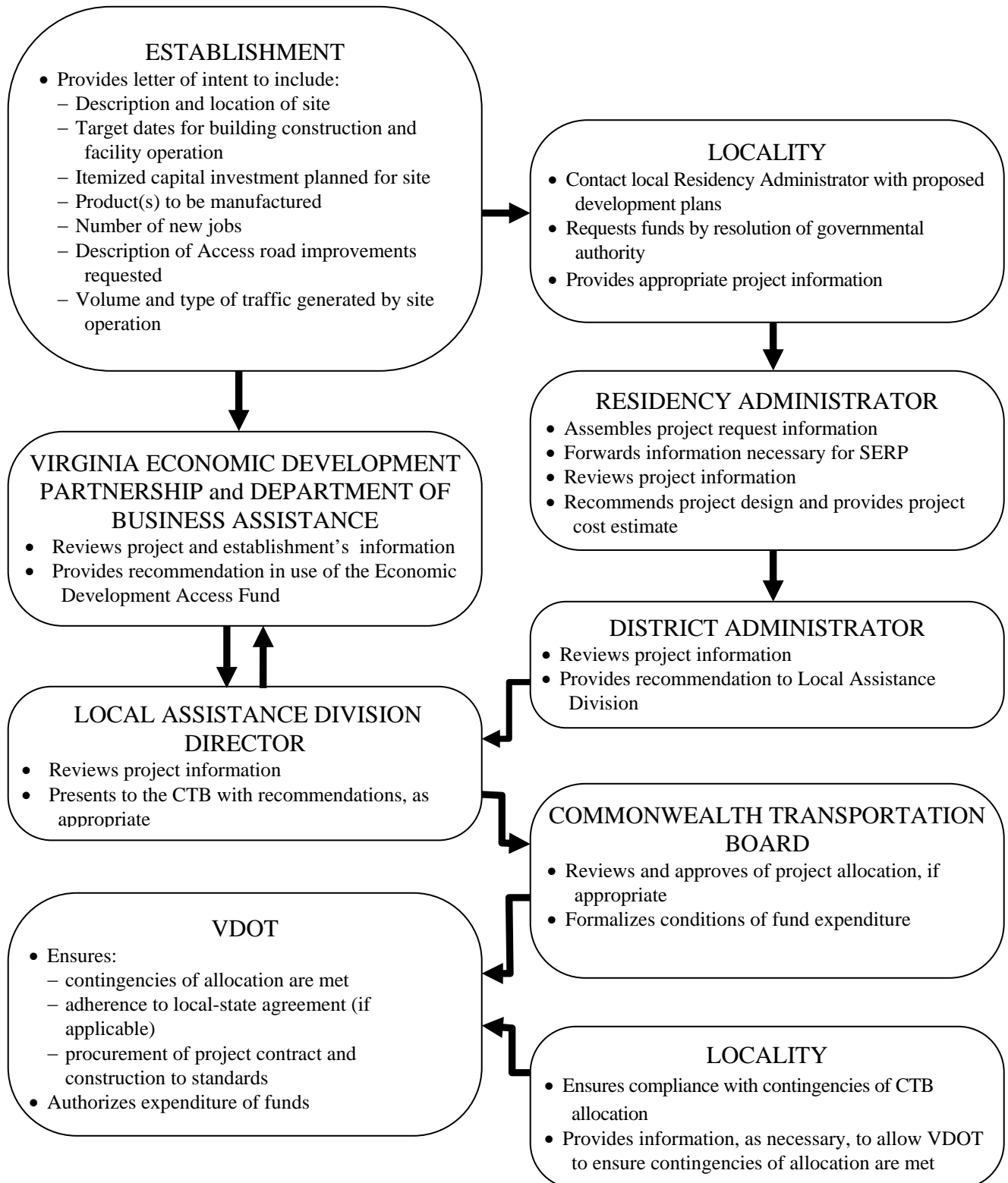
6. The VDOT manager will monitor the construction of locality-administered projects and will notify the Local Assistance Division when the construction is started and completed

#### D. Time Frame for Application Process

An initial request from a local governing body for Economic Development Access funding usually takes four to six months to reach approval by the CTB. Meeting the conditions of CTB approval often requires another two or more months. It should also be noted that a number of different local and state governmental officials and bodies will review each request, some of which, including the CTB meet once each month.

Steps in preparing and approving local-state agreements (if necessary), conducting environmental and historical reviews, advertising for bids, awarding a contract, and constructing the road will require varying lengths of time. Two to three months should be allowed to complete the SERP (State Environmental Review Process), which may result in additional time required for conducting additional studies and obtaining environmental permits. The SERP process (see page 8, paragraph IV.A.) must be completed prior to any land disturbance activity. *Planning ahead for an access road project is important.*

Figure 1 – Flow Chart  
Project Development Process through Fund Authorization



## V. LIMITATIONS:

### A. Maximum Allocation

Subject to available funding, the maximum unmatched allocation to a locality within any one fiscal year is \$300,000; allocations may be used for one or more projects. Further, the total amount available statewide under this program is limited by statute.

The maximum allocation to any regular project is limited to the lesser of either: the reasonable cost of a two-lane road (see page 1, paragraph II.A) or 10% of the qualifying investment made by the qualifying establishment.

Example 1	Cost of constructing road	=	\$ 90,000
	Qualifying investment	=	1,500,000
	10% of qualifying investment	=	150,000
	Allocation is limited to		\$ 90,000
Example 2	Cost of constructing road	=	\$ 90,000
	Qualifying investment	=	600,000
	10% of qualifying investment	=	60,000
	Allocation is limited to		\$ 60,000

A locality may receive an allocation on behalf of a regional industrial authority without impacting its annual allocation eligibility. An allocation for a regional industrial facility authority project is subject to the same limitations as other Economic Development Access projects.

When the cost of an individual access project exceeds \$300,000, the locality may request up to \$150,000 in supplemental funds which must be matched on a dollar-for-dollar basis by a contribution from the general fund of the county, city, or town. Such supplemental funding shall be limited to 5% of the qualifying investment above \$3,000,000. Project costs in excess of the allocation will be the responsibility of the locality.

### B. Funds Not to be Anticipated

It is intended that Economic Development Access Program funds be requested as reasonably needed by the localities of the state, but that these funds not be anticipated from year to year. Unused eligibility from a preceding year cannot be carried forward to an ensuing fiscal year.

### C. Time Limits for Named Establishment Economic Development Access Projects

In order to ensure the most effective use of the limited funds available for the

program, allocations made for new access roads or improvements to serve a specific qualifying establishment are expected to be committed by contract or otherwise under construction within two years from the date of CTB approval. Allocations for projects that are not actively under way within two years of project approval by the CTB may be deallocated to fund new projects unless the Director of Local Assistance grants an exception due to unusual circumstances. At the end of 22 months following the allocation, if the proposed improvements to serve the new or expanding qualifying establishment have not been initiated, the locality shall submit a written explanation of the status of the project and reason for delay if an extension of time is needed. Nothing precludes the locality from reapplying for an allocation in the future once the plans for economic development are more imminent.

D. Time Limits for Bonded Economic Development Access Projects

Pursuant to § 33.1-221 (see Appendix A) of the *Code of Virginia* which establishes funding for this program, allocations may be approved for new access roads or improvements to existing roads for projects when a qualifying establishment is not yet constructed or under firm contract and the local governing body guarantees by bond or other acceptable surety that such will occur. In order to ensure the most effective use of the limited funds available for the program, the maximum time limit for such bond shall be five years, beginning on the date of the allocation of the economic development access funds by resolution of the CTB. At the end of the five-year period the amount of Economic Development Access funds expended on the project and not justified by eligible capital outlay of one or more qualifying establishments acceptable to the Board shall be reimbursed to the VDOT voluntarily by the locality or by forfeiture of the surety. In the event that, after VDOT has been reimbursed, but still within 24 months immediately following the end of the five-year period, the access funds expended are justified by eligible capital investment of one or more eligible establishments, then the locality may request a refund of one-half of the sum reimbursed to VDOT. The request may be granted by the CTB if funds are available, on a first-come, first-served basis in competition with applications for access funds from other localities.

E. Improvements to Existing Roads

Where an existing road constitutes a portion of the secondary system of state highways or is part of the road system of the locality in which it is located, Economic Development Access funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by the new or expanding establishment. Additionally, where access to a qualified economic development site is via an existing road that can be determined inadequate for providing safe and efficient movement of the type of traffic generated by the site or that this traffic conflicts with the surrounding road network to the extent that it poses a safety hazard to the general public, consideration may be given to funding additional improvements. Such projects must be requested by resolution of the local governing body and will be evaluated on case-by-case basis. The VDOT Regional Traffic Engineer may be requested to evaluate and provide a recommendation on such requests. However, turn lanes, signal lights or crossover

improvements are not usually warranted as stand-alone projects and no primary highway may be improved with these funds.

When a project is established to improve an existing road to serve an eligible parcel having frontage on that road, Economic Development Access funds will provide for improvements to the proposed primary entrance.

F. Towns

Towns maintaining their own streets and receiving maintenance payments under § 33.1-41.1 of the *Code of Virginia* shall be treated for purposes of this program as independent entities (for a list of these towns, see Appendix D).

Towns whose streets are maintained as a part of the secondary system of highways will be considered as part of their respective county. An allocation to such a town will be calculated as a portion of its county's \$300,000 annual unmatched limitation and will be subject to concurrence by resolution of the respective Board of Supervisors.

VI. ACCEPTANCE INTO SYSTEM:

New roadways, upon completion, are opened to public use and are to be accepted into the appropriate system for maintenance. In all counties except Arlington and Henrico, and in towns not maintaining their own road systems, these roads will be added to the secondary system of state highways. In cities and towns receiving maintenance payments, and in the counties of Arlington and Henrico, these roads are to be taken into the road system of these localities. If a developer or other landowner intends to close or gate a road into a development for security or other reasons, the Economic Development Access Program is not an appropriate source of funding.

Statutory Authority  
*Code of Virginia*

§ 33.1-221. Funds for access roads to economic development sites and airports; construction, maintenance, etc., of such roads.

A. Notwithstanding any other provision of law, there shall be appropriated to the Commonwealth Transportation Board funds derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other state revenue allocated for highway purposes, which shall be used by the Board for the purposes hereinafter specified, after deducting the costs of administration before any of such funds are distributed and allocated for any road or street purposes.

Such funds shall be expended by the Board for constructing, reconstructing, maintaining or improving access roads within counties, cities and towns to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Business Assistance will be built under firm contract or are already constructed and to licensed, public-use airports; in the event there is no such establishment or airport already constructed or for which the construction is under firm contract, a county, city, or town may guarantee to the Board by bond or other acceptable device that such will occur and, should no establishment or airport acceptable to the Board be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited. The time limits of the bond shall be based on regular review and consideration by the Board. Towns which receive highway maintenance payments under § 33.1-41.1 shall be considered separately from the counties in which they are located when receiving allocations of funds for access roads.

B. In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the Board shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the airport or the economic development site. Within any economic development site or airport, the total volume of traffic to be generated shall be taken into consideration in regard to the overall cost thereof. No such access road shall be constructed or improved on a privately owned economic development site.

C. Any access road constructed or improved under this section shall constitute a part of the secondary system of state highways or the road system of the locality in which it is located and shall thereafter be constructed, reconstructed, maintained and improved as other roads in such system.

(Code 1950, § 33-136.1; 1956, c. 161; 1962, c. 550; 1964, c. 254; 1970, c. 322; 1978, c. 299; 1980, c. 38; 1989, c. 336; 1996, cc. 85, 128; 1997, c. 89; 2006, cc. 147, 473.)

**RESOLUTION  
OF THE  
COMMONWEALTH TRANSPORTATION BOARD**

**June 15, 2006**

**MOTION**

**Made By: Mr. Martin Seconded By: Mr. Bowie Action: Motion Carried**

**Title: Economic Development Access Fund Policy  
(Revision)**

**WHEREAS**, item 492.D.6 of the 2005 Appropriations Act directed the Department of Transportation, in consultation with representatives of local governments and local, regional, and state economic development agencies to revise the definition of businesses and industry that qualify for access road funding; and

**WHEREAS**, the Department of Transportation submitted House Document No. 4, entitled Definition of Businesses and Industry that Qualify for Industrial Access Road Funding, to the Governor and the General Assembly of Virginia in response; and

**WHEREAS**, the General Assembly has amended Section 33.1-221 of the *Code of Virginia* (1950) relating to the fund for the construction of industrial access roads to focus on economic development sites within the counties, cities and towns of the Commonwealth; and

**WHEREAS**, it is the sense of this Board that its present policy should be revised to reflect Chapter 147 and Chapter 473 of the 2006 Virginia Acts of the Assembly and restated to be more compatible with present conditions and reflective of certain findings contained within House Document No. 4.

**NOW, THEREFORE, BE IT RESOLVED** that the Commonwealth Transportation Board hereby adopts the following policy to govern the use of economic development access funds pursuant to Section 33.1-221, as amended, of the *Code of Virginia* (1950):

1. The use of economic development access funds shall be limited to: (1) providing adequate access to economic development sites on which new or substantially expanding manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Business Assistance; and (2) improving existing roads that may not be adequate to serve the establishments as described in (1).
2. Economic development access funds shall not be used for the acquisition of rights of way or adjustment of utilities. These funds are to be used only for the actual construction and engineering of a road facility adequate to serve the traffic generated by the new or

expanding eligible establishments.

3. Economic development access funds may not be used for the construction of access roads to schools, hospitals, libraries, airports, armories, speculative office buildings, shopping centers, apartment buildings, professional offices, residential developments, churches, hotels, motels, government installations, or similar facilities, whether public or private. (Access roads to licensed, public-use airports, while provided for in Section 33.1-221, are funded and administered separately).

4. No cost incurred prior to this Board's approval of an allocation from the economic development access fund may be reimbursed by such funds. Economic development access funds shall be authorized only after certification that the economic development establishment as listed or meeting the criteria as described will be built under firm contract, or is already constructed, or upon presentation of acceptable surety in accordance with paragraph (a) of Section 33.1-221, as amended, of the *Code of Virginia* (1950).

5. When an eligible establishment is not yet constructed or under firm contract and a local governing body guarantees by bond or other acceptable surety that such will occur, the maximum time limit for such bond shall be five years, beginning on the date of the allocation of the economic development access funds by the Commonwealth Transportation Board. At the end of the five-year period the amount of economic development access funds expended on the project and not justified by eligible capital outlay of one or more eligible establishments acceptable to the Board shall be reimbursed to the Department of Transportation voluntarily by the locality or by forfeiture of the surety. In the event that, after the Department of Transportation has been reimbursed, but still within 24 months immediately following the end of the five-year period, the access funds expended come to be justified by eligible capital outlay of one or more eligible establishments, then the locality may request a refund of one-half of the sum reimbursed to the Department of Transportation, which request may be granted if funds are available, on a first-come, first-served basis in competition with applications for access funds from other localities.

6. Economic development access funds shall not be used to construct or improve roads on a privately owned economic development site. Nor shall the construction of a new access road to serve any economic development site on a parcel of land which abuts a road constituting a part of the systems of state highways or the road system of the locality in which it is located be eligible for economic development access funds, unless the existing road is a limited access highway and no other access exists. Further, where the existing road is part of the road system of the locality in which it is located, or the secondary system of state highways, economic development funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by new or expanding eligible establishment.

In the event an economic development site has access according to the foregoing provisions of this policy, but it can be determined that such access is not adequate in that it does not provide for safe and efficient movement of the traffic generated by the eligible establishment on the site or that the site's traffic conflicts with the surrounding road network to the extent that it poses a safety hazard to the general public, consideration will



be given to funding additional improvements. Such projects shall be evaluated on a case-by-case basis upon request, by resolution, from the local governing body. Localities are encouraged to establish planning policies which will discourage incompatible mixes such as industrial and residential traffic.

7. Not more than \$300,000 of unmatched economic development access funds may be allocated in any fiscal year for use in any county, city or town which receives highway maintenance payments under Section 33.1-41.1, *Code of Virginia*. A town whose streets are maintained under either Section 33.1-79 or 33.1-82, *Code of Virginia*, shall be considered as part of the county in which it is located. The maximum eligibility of unmatched funds shall be limited to 10% of the capital outlay of the designated eligible establishments. The unmatched eligibility may be supplemented with additional economic development access funds, in which case the supplemental access funds shall not be more than \$150,000, to be matched dollar-for-dollar from funds other than those administered by this Board. The supplemental economic development access funds over and above the unmatched eligibility shall be limited to 5% of the capital outlay of eligible establishments as previously described. Such supplemental funds shall be considered only if the total estimated cost of eligible items for the economic development access improvement exceeds \$300,000.

If an eligible site is owned by a regional industrial facility authority, as defined in §15.2-6400 et seq. of the *Code of Virginia*, funds may be allocated for construction of an access road project to that site without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction, with the same funding limitations as prescribed for other individual projects.

8. Eligible items of construction and engineering shall be limited to those which are essential to providing an adequate facility to serve the anticipated traffic while meeting all appropriate CTB and state policies and standards. However, additional pavement width or other features may be eligible where necessary to qualify the road facility in a city or town for maintenance payments under Section 33.1-41.1, as amended, of the Code of Virginia.

9. It is the intent of the Board that economic development access funds not be anticipated from year to year. Unused eligibility cannot be allowed to accumulate and be carried forward from one fiscal year to another.

10. The Commonwealth Transportation Board will consult and work closely with the Virginia Economic Development Partnership (VEDP) and the Department of Business Assistance (DBA) in determining the use of economic development access funds and will rely on the recommendations of the VEDP and the DBA in making decisions as to the allocation of these funds. In making its recommendations to this Board, the VEDP and the DBA will take into consideration the impact of the proposed facility on the employment and tax base of both the area in which the facility is to be located and the Commonwealth of Virginia.

11. Prior to the formal request for the use of economic development access funds to provide access to new or expanding eligible establishments, the location of the access road shall be submitted for approval by the Virginia Department of Transportation. VDOT shall take into

consideration the cost of the facility as it relates to the location and as it relates to the possibility of the future extension of the road to serve other possible eligible establishments, as well as the future development of the area traversed.

12. Prior to this Board's allocation of funds for such construction or road improvements to an eligible economic development establishment proposing to locate or expand in a county, city or town, the governing body shall by resolution request the access funds and shall be responsible for the preliminary negotiations with the eligible establishment and others interested. Engineers of the Virginia Department of Transportation will be available for consultation with the governing bodies and others, and may prepare surveys, plans, engineering studies, and cost estimates.

13. The Commonwealth Transportation Commissioner is directed to establish administrative procedures to assure the provisions of this policy and legislative directives are adhered to and complied with.

**BE IT FURTHER RESOLVED** that the above policy shall become effective immediately, and all policies heretofore adopted by this Board governing the use of industrial access funds shall be rescinded simultaneously.

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## Sample Resolution Formats

### Project For Named Qualifying Establishment [The qualifying establishment exists or is under firm contract]

At a regularly scheduled meeting of the [NAME of locality] [select (City/Town Council or County Board of Supervisors)] held on [month and day], 20[##], on a motion by [BOS or Council member name], seconded by [BOS or Council member name], the following resolution was adopted by a vote of [#] to [#]:

WHEREAS, the [local government or full name of industrial authority created pursuant to § 15.2-6402 of the *Code of Virginia*] [has acquired/desires to develop] property for the purpose of economic development located off of [NAME of road] ([Route #]) in the [City/Town/County] of [NAME of City/Town/County], Virginia, within the [NAME of industrial park or development]; and

WHEREAS, the [full name of corporation or entity] has purchased property located in the [City/Town/County] of [NAME of City/Town/County] and [has entered/will soon enter] into a firm contract to [construct/expand] its facilities on that property for the purpose of [producing (type of product or production/manufacturing operation description)]; and

WHEREAS, this new facility is expected to involve new private capital investment in land, building, and equipment of approximately [\$\$\$] and the [NAME of industry or establishment] is expected to employ [###] persons at this facility; and

WHEREAS, operations are expected to begin at this new facility on or about [month and day], 20[##]; and

#### *FOR A NEW ROAD*

WHEREAS, the subject property has no access to a public street or highway and will require the construction of a new roadway to connect with [road NAME] (Route [###]); and

#### *FOR IMPROVEMENTS TO AN EXISTING ROAD*

WHEREAS, the existing public road network does not provide for adequate access to this facility and it is deemed necessary that improvements be made to [road NAME] (Route[###]); and

#### *FOR ALL PROJECTS*

WHEREAS, the [City/Town/County] of [NAME of City/Town/County] hereby guarantees that the necessary environmental analysis, mitigation, and fee simple right of way for this improvement and utility relocations or adjustments, if necessary, will be provided at no cost to

the Economic Development Access Fund; and

WHEREAS, the [City/Town/County] of [NAME of City/Town/County] acknowledges that the State Environmental Review Process (SERP) must be completed prior to any construction activity on this project as a condition of the use of the Economic Development Access Fund; and

WHEREAS, the [City/Town/County] of [NAME of City/Town/County] hereby guarantees that all ineligible project costs and all costs not justified by eligible capital outlay will be provided from sources other than those administered by the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED THAT: The [NAME of City/Town/County] [select (City/Town Council or County Board of Supervisors)] hereby requests that the Commonwealth Transportation Board provide Economic Development Access Program funding to provide an adequate road to this property; and [(if following paragraph applies)]

*FOR A NEW ROAD ONLY*

BE IT FURTHER RESOLVED THAT: The [NAME of locality] [select (City/Town Council or County Board of Supervisors)] hereby agrees that the new roadway so constructed will be added to and become a part of the [select either (City/Town of NAME road system) or (secondary system of state highways)].

(SEAL)

A COPY TESTE: \_\_\_\_\_  
Chairperson/Mayor

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Where road costs are expected to exceed an amount equal to one-tenth of the qualifying capital investment by a qualifying establishment, see page 4, paragraph III.B.1., for procedures for local governments.

Bonded Project  
[No (or insufficient) qualifying investment]

At a regularly scheduled meeting of the [NAME of locality] [select (City/Town Council or County Board of Supervisors)] held on [month and day], 20[##], on a motion by [BOS or Council member name], seconded by [BOS or Council member name], the following resolution was adopted by a vote of [#] to [#]:

WHEREAS, the [full name of industrial authority, local government, or regional agency] [has acquired/desires to develop] property for the purpose of economic development use located off of [NAME of road] ([Route #]) in the [City/Town/County] of [NAME of City/Town/County], Virginia, for the purpose of economic development within the [NAME of industrial park or development]; and

WHEREAS, this property is expected to be the site of new private capital investment in land, building, and manufacturing equipment which will provide substantial employment; and

*FOR A NEW ROAD*

WHEREAS, the subject property has no access to a public street or highway and will require the construction of a new roadway to connect with [road NAME] (Route [###]); and

*FOR IMPROVEMENTS TO AN EXISTING ROAD*

WHEREAS, the existing public road network does not provide for adequate access to this property and it is deemed necessary that improvements be made to [road NAME] (Route [####]) and

*FOR ALL PROJECTS*

WHEREAS, the [City/Town/County] of [NAME of City/Town/County] hereby guarantees that the necessary environmental analysis, mitigation, and fee simple right of way for this improvement and utility relocations or adjustments, if necessary, will be provided at no cost to the Economic Development Access Fund; and

WHEREAS, the [City/Town/County] [NAME of City/Town/County] acknowledges that the State Environmental Review Process (SERP) must be completed prior to any construction activity on this project as a condition of the use of the Economic Development Access Fund; and

WHEREAS, the [City/Town/County] of [NAME of City/Town/County] hereby guarantees that all ineligible project costs and all costs not justified by eligible capital outlay will be provided from sources other than those administered by the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED THAT: The [NAME of City/Town/County]

[select (City/Town Council or County Board of Supervisors)] hereby requests that the Commonwealth Transportation Board provide Economic Development Access Program funding to provide an adequate road to this property; and

BE IT FURTHER RESOLVED THAT: The [NAME of Locality] [select (City/Town Council or County Board of Supervisors)] hereby agrees to provide a surety or bond, acceptable to and payable to the Virginia Department of Transportation, in the full amount of the Commonwealth Transportation Board's allocation less eligible private capital outlay credit determined by VDOT; this surety shall be exercised by the Department of Transportation in the event that sufficient qualifying capital investment does not occur on [(qualifying parcel(s)) or identify each parcel to be served (e.g., parcel #, lot #)] within five years of the Commonwealth Transportation Board's allocation of funds pursuant to this request; and [(if following paragraph applies)]

*FOR A NEW ROAD ONLY*

BE IT FURTHER RESOLVED THAT: The [NAME of locality] [select (City/Town Council or County Board of Supervisors)]\_hereby agrees that the new roadway so constructed will be added to and become a part of the [select either (City/Town of NAME road system) or (secondary system of state highways)].

(SEAL)

A COPY TESTE: \_\_\_\_\_  
Chairperson/Mayor

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Where road costs are expected to exceed an amount equal to one-tenth of the qualifying capital investment by a qualifying establishment, see page 5, paragraph III.B.2., for procedures for local governments.

Towns Maintaining Own Streets  
Under §33.1-41.1 of the *Code of Virginia*

Abingdon	Luray
Altavista	Marion
Ashland	Narrows
Big Stone Gap	Orange
Blacksburg	Pearisburg
Blackstone	Purcellville
Bluefield	Pulaski
Bridgewater	Richlands
Chase City	Rocky Mount
Chincoteague	Saltville
Christiansburg	Smithfield
Clifton Forge	South Boston
Culpeper	South Hill
Dumfries	Strasburg
Elkton	Tazewell
Farmville	Vienna
Front Royal	Vinton
Grottoes	Warrenton
Herndon	Wise
Lebanon	Woodstock
Leesburg	Wytheville

Acknowledgment of the Virginia Department of Transportation's  
State Environmental Review Process Requirement for Projects Utilizing VDOT Funding

*This acknowledgement should accompany all requests from localities for state funding for  
Access Road Program projects*

As a representative for the City/ Town/ County of \_\_\_\_\_, my signature below indicates this locality's understanding of the following:

- The State Environmental Review Process (SERP) is a product of the Code of Virginia § 10.1-1188 and a subsequent agreement entered into by the Secretaries of Transportation and Natural Resources to provide for the environmental review of state funded projects prior to construction.
- This 60-90 day process is accomplished by VDOT based upon information provided by local government and must be completed prior to construction and the actual distribution of the funds authorized by the Commonwealth Transportation Board (CTB).
- The locality will provide the VDOT manager with specific information on construction activities for the subject project to be funded by one of VDOT's programs for providing road access. The locality will also provide the VDOT manager or representative with the results of any environmental reviews previously performed on the project area relative to the subject project. The locality will not begin construction activities within the access roadway until receiving written notification from the VDOT manager of the completion of the SERP, along with details regarding the environmental commitments that remain outstanding.
- The locality will not permit access road project construction activities to occur within the area of the access roadway project until an agreement between the Department and the locality has been fully executed.
- The locality is responsible for seeing that all outstanding environmental commitments are completed or addressed satisfactorily prior to construction. The Department reserves the right to refuse reimbursement of costs associated with this project should the locality neglect to comply with responsibilities assumed by engaging in any activity which may impact the project. Should any land disturbance activities associated with the access road project occur within the project area prior to the completion of the SERP and satisfaction of associated outstanding environmental commitments, the project will no longer be considered eligible for funding approved by the CTB for this project.

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Project Name/ Description: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City/ Town/  
County: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## Environmental Process for State-Funded Projects

The following requirements pertain to all state-funded projects administered under the Economic Development Access Program. Regardless of funding, the State Environmental Review Process (SERP) must be completed prior to advertisement and land disturbance in order to satisfy the requirements of § 10.1-1188 of the *Code of Virginia*. For additional information, please refer to the Department's website at:

[http://www.virginiadot.org/business/environmental\\_requirementsAccessRequirements.asp](http://www.virginiadot.org/business/environmental_requirementsAccessRequirements.asp)

The locality is responsible for environmental studies; the following items establish the responsibilities of the parties under this agreement:

### I. Administrative Conditions

#### A. **Locality Shall:**

1. Meet with VDOT prior to selection of a consultant or the commitment of any resources to scope the project, discuss the environmental clearances necessary and the procedure for submitting these environmental clearances to VDOT in order to allow the project to proceed to construction.
2. Use qualified staff or consultant services to manage the environmental process.
3. Provide VDOT an opportunity to review and comment on qualifications of consultants to perform the environmental studies before a contract is executed,
4. Provide VDOT an opportunity to review and comment on the environmental scope of work for the study before a contract is executed.
5. Schedule meetings with VDOT at appropriate milestones in the study as identified during scoping to review study progress and adequacy.
6. Provide all requests to VDOT for technical and coordination assistance from Locality and not from the Locality's consultant.

#### B. **VDOT Shall:**

1. Identify a VDOT representative for environmental decisions.
2. Review and comment to Locality on the suitability of consultants responsible for conducting environmental work.
3. Review and comment to Locality on the environmental scope of work for the study, including the general level of effort allotted for the study if consultant services are used.

## **Environmental Requirements for PRELIMINARY ENGINEERING and CONSTRUCTION**

### II. Preliminary Engineering Performed by Local Government

#### A. **Locality Shall:**

1. Submit to VDOT necessary information regarding the project scope to begin the State Environmental Review Process (SERP).
2. Implement all environmental commitments identified in the SERP Preliminary Environmental Inventory (PEI) pertaining to the development of the project (as well as environmental commitments made related to any other law, regulation, or Executive Order).
3. Obtain an Antiquities Act permit from the Virginia Department of Historic Resources prior to conducting any archaeological investigations on State-controlled right of way.
4. Provide VDOT an opportunity to participate as a consulting party in any Memorandum of Agreement developed and executed in compliance with the National Historic Preservation Act.
5. Conduct any post-SERP coordination required by scope changes that occur during the development of the project.
6. Design project in accordance with Virginia Erosion and Sediment Control law and regulations, Virginia Stormwater Management law and regulations, Chesapeake Bay Preservation Act.
7. Secure all necessary water quality permits in the Locality's name and implement permit conditions, including but not limited to compensatory mitigation, project water quality monitoring, time of year restrictions, wildlife crossings, etc.
8. Complete Water Quality Permits and Natural Resource Due Diligence Certification form (EQ-555) and submit to VDOT.
9. Perform Due Diligence assessment, to constitute the standard of "All Appropriate Inquiry" (Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Section 101(35), as amended), to determine the actual/potential presence of hazardous materials/wastes/substances for all properties to be acquired and/or used as right of way prior to the initiation of property acquisition.
10. Perform Due Diligence and Due Care activities identified in Due Diligence Certification form (EQ-121) and submit to VDOT; locality shall not submit any scopes of work, reports or other documents related to Due Diligence or Due Care activities for VDOT review.
11. Not fail to perform Due Diligence and exert Due Care. Failure will result in the municipality assuming financial responsibility for any and all claims, demands, damages, losses, judgments, penalties, obligations, and liabilities (including without limitation, related reasonable legal and consulting fees and expenses) arising out of, or relating to, any pre-existing contamination to properties that constitute right of way for the project; and release the Commonwealth from and against any and all claims for contribution under CERCLA, and/or any other environmental law or regulation.

**B. VDOT shall:**

1. Perform the administrative portion of the SERP and provide the SERP results to the Locality.

2. Receive copy of signed Water Quality Permits and Natural Resource Due Diligence Certification form (EQ-555) from Locality.
3. Receive copy of signed Hazardous Materials Due Diligence Certification form (EQ-121) from Locality.

### III. Construction Administered by Local Government

#### **A. *Locality Shall:***

1. Implement all SERP commitments pertaining to the construction of the project.
2. Implement all water quality permit conditions.
3. Implement construction in accordance with approved Erosion and Sediment Control and stormwater management plan.
4. Have on-site construction inspector with Virginia Department of Conservation and Recreation Erosion and Sediment Control inspector certification. Perform an Erosion and Sediment Control inspection every two weeks (minimum).
5. Make the necessary notifications to the Environmental Protection Agency (EPA) for any “improvements” made to sinkholes to facilitate storm water drainage.
6. Include in the contract documents and enforce all special provisions and specifications related to the environment.

#### **B. *VDOT Shall:***

1. Complete the Environmental Certification Checklist (EQ-103) prior to approval for advertisement and construction.
2. Monitor the project in accordance with the Department’s Environmental Monitoring Standard Operating Procedures to ensure environmental commitments identified as a result of SERP are implemented.

### IV. In the event VDOT Acts as Locality’s Construction Contractor

#### **A. *Locality Shall:***

1. Inform VDOT of any environmental issues that may be encountered during construction and provide access to any study results to assist the contractor in developing and implementing the project in accordance with the regulatory permits and clearances.
2. Provide copies of water quality permits to VDOT.
3. Document VDOT as administering the project under Locality’s water quality permits.
4. Be responsible for compliance with all water quality permit conditions.
5. Develop and submit to VDOT for approval, construction specifications and special provisions for any environmental commitments required during construction.

#### **B. *VDOT Shall:***

1. Complete the Environmental Certification Checklist (EQ-103) prior to approval for advertisement and construction.
2. Implement all SERP commitments pertaining to the construction of the project.
3. Implement all water quality permit conditions pertaining to the construction of the project.
4. Implement construction in accordance with Locality's approved Erosion and Sediment Control and stormwater management plan.
5. Have on-site construction inspector with Department of Conservation and Recreation Erosion and Sediment Control inspector certification. Perform an Erosion and Sediment Control inspection every two weeks (minimum).
6. Monitor the project in accordance with the Department's Environmental Monitoring Standard Operating Procedures.

## Types of Surety

### Irrevocable Standby Letter of Credit

Beneficiary:  
Virginia Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219

Date: \_\_\_\_\_  
Amount US Dollars: \_\_\_\_\_

Applicant:  
[enter name of City/Town/County]  
[enter address]  
[enter City, State and zip code]

Letter of Credit # \_\_\_\_\_  
Expiration Date: \_\_\_\_\_

Dear Sirs:

We hereby issue this irrevocable standby letter of credit in your favor available by your draft(s) up to the aggregate amount of [enter written amount] US Dollars ([enter dollar amount] drawn on us at sight accompanied by the following document:

Beneficiary's signed statement certifying that "The drawing is for reimbursement to the Virginia Department of Transportation for costs incurred in the construction of the Economic Development Access road, Project [enter state number assigned to project] to and within the [enter name of development] in the [enter name of City/Town/County of (locality name)] Virginia. Said reimbursement is pursuant to the Commonwealth Transportation Board's resolution of [enter CTB resolution date and, if applicable, include "and the local-state agreement dated (date of agreement)], requiring that eligible industry be constructed or under firm contract no later than (enter date)].

Partial drawings are permitted.

Each draft drawn relative hereto must be marked: "Drawn under [enter name of institution providing surety] Letter of Credit # \_\_\_\_\_," and be accompanied by this original letter of credit.

This irrevocable standby letter of credit sets forth in full the terms of our undertaking. This undertaking shall not in any way be modified, amended or amplified by reference to any documents or contracts referred to herein.

We hereby agree to honor each draft drawn under and in compliance with the terms of this credit, if duly presented (together with the documents as specified) at our office at [enter address of institution providing surety], on or before the expiration date hereof.

This credit is subject to the "Uniform Customs and Practice for Documentary Credits" (1993 Revision), International Chamber of Commerce Publication No. 500.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

Surety Bond

Bond Number: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, THAT the [enter name of city/town/county, Virginia, as Principal, and [enter name of financial backing institution], as Surety, are held and firmly bound unto the Virginia Department of Transportation, as obligee, in the full sum of [enter written amount of surety necessary] Dollars ([enter currency amount]) lawful money of the United States of America, for payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Signed, sealed, and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

WHEREAS, the Virginia Department of Transportation, through the Commonwealth Transportation Board, has allocated (enter amount of CTB allocation)] in Economic Development Access Program funds for the [enter name of industrial park], located [enter location (e.g., "off Route [###], north/south/east/west of ...")], in [enter name of city/town/county, Virginia, Project [enter state project #], to assist in providing access to the proposed industrial park.

NOW, THEREFORE, the condition of the above obligation is such that the [enter City/Town/County of (locality name)] shall reimburse the Virginia Department of Transportation for any expenses incurred by the Economic Development Access Program fund for that part of this project's construction not justified by the eligible capital outlay of qualifying establishment(s) served by the project, as of [enter date of expiration (5 years after date of CTB allocation)], pursuant to the contingency #\_\_\_\_ of the Commonwealth Transportation Board's resolution of [enter date of CTB allocation], then this obligation to be void and of no effect; otherwise to be and remain in full force and virtue.

Attest: \_\_\_\_\_

Principal: \_\_\_\_\_

By: \_\_\_\_\_

Attest: \_\_\_\_\_

Surety: \_\_\_\_\_

By: \_\_\_\_\_

Virginia Department of Transportation  
Economic Development Access Program  
Outline/Checklist

The purpose of the Economic Development Access Program is to assist localities in providing adequate access to new or expanding economic development sites. Adequate access, in consideration of the type and volume of traffic to be generated by the subject site, may require the construction of a new roadway, improvement of an existing roadway, or both to serve the qualifying development. The program is administered by VDOT under the authority of § 33.1-221 of the *Code of Virginia*.

These funds may be requested by the local governing body of counties, cities, and certain towns that receive highway maintenance payments under § 33.1-41.1 of the *Code of Virginia*. The maximum unmatched allocation within any one fiscal year is \$300,000. A supplement of up to \$150,000 is available upon locality's match (dollar for dollar). Funding is dependent on the estimated cost of eligible portion of access road and anticipated eligible capital investment on sites served. Such supplemental funds shall be considered only when an individual project's estimated eligible costs exceed \$300,000.

Funds may be allocated for construction of an access road project to an eligible site that is owned by a regional industrial facility authority, created pursuant to § 15.2-6402 of the *Code of Virginia*, without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction, subject to the same funding limitations as prescribed for other individual projects.

#### PROJECT IDENTIFICATION

- ☐ Qualifying Establishment – (where it has been determined that a named establishment is eligible and the development site does not have adequate access)
  - ☐ Determination by VDOT, VEDP and VDBA
  - ☐ Documentation of eligible capital investment – (10% for purpose of justifying road costs)
  - ☐ Reimbursement based on actual project cost, not to exceed 10% of the documented eligible capital outlay of the qualifying establishment(s) served
- ☐ Bonded Project – (where site(s) is (are) determined not to have adequate access and the locality is willing to guarantee that eligible capital investment will occur warranting the use of the access road funds)
  - ☐ Determination by VDOT, VEDP and VDBA
  - ☐ Provision of acceptable surety by locality that qualifying investment will be established on project within 5-year period beginning with date of CTB allocation by resolution
  - ☐ Reimbursement based on eligible capital investment (again, 10% for purpose of justifying road costs established w/in 5-year bond period) of qualifying establishment(s) served in relation to cost of project

## REQUEST & PROJECT INFORMATION SUBMITTAL

- ☐ A qualifying establishment provides the locality with a letter of intent that includes:
  - ☐ Description and location of site
  - ☐ Target dates for building construction and facility operation
  - ☐ Itemized capital investment planned for site
  - ☐ Description of operation of the subject establishment
  - ☐ Number of new jobs
  - ☐ Description of access road improvements requested
  - ☐ Volume and type of traffic generated by site operation
- ☐ The locality contacts the local VDOT manager with the proposed development plans:
  - ☐ Requests funds by resolution of the local government
  - ☐ Provides appropriate project information
- 1. The Local VDOT Manager
  - ☐ Assembles project request information
  - ☐ Forwards information necessary for SERP
  - ☐ Reviews project information
  - ☐ Recommends project design and provides project costs estimate
- 2. The District Administrator
  - ☐ Reviews project information
  - ☐ Provides recommendation to Local Assistance Division
- 3. The Virginia Economic Development Partnership and the Department of Business Assistance
  - ☐ Review project and information pertaining to operation of the establishment
  - ☐ Provide recommendation in use of the Economic Development Access Fund
- 4. The Local Assistance Division Director
  - ☐ Reviews project information
  - ☐ Assembles information and recommends proposed project to CTB for consideration.
- 5. The Commonwealth Transportation Board
  - ☐ Reviews and approves the project allocation, if appropriate
  - ☐ Formalizes conditions of fund expenditure
- 6. Virginia Department of Transportation
  - ☐ Ensures contingencies of allocations are met
  - ☐ Adherence to local-state agreements
  - ☐ Ensures procurement of project contract and construction to standards
  - ☐ Approves expenditures of funds



Economic Development Access Program  
Qualifying Establishment / Qualifying Investment Documentation

Submitted for: \_\_\_\_\_  
(Project number/UPC or name of development)

Locality: \_\_\_\_\_

Establishment

- ☐ Name: \_\_\_\_\_
- ☐ Operation(s) narrative attached for each establishment (preferably, this is on letterhead of the business and signed by an executive of the company)

New or Anticipated Employment (number)

☐ \_\_\_\_\_

Traffic Generation/Type (cars & truck trips per day)

☐ \_\_\_\_\_

Location (in relation to access project)

- ☐ # \_\_\_\_\_ (confirm parcel number based on plat dated \_\_\_\_\_), or
- ☐ (attach plat or sketch with parcel marked)

Land - Verification of Ownership (by qualifying establishment)

- ☐ Deed/Plat (copy attached)
- ☐ Purchase Agreement (copy attached)
- ☐ Amount of Investment represented: \$ \_\_\_\_\_

Building – Verification of (\*New) Investment

- ☐ Contract (“firm”) to build (copy attached)
- ☐ Invoices (attached)
- ☐ Transaction verification (copies of checks, receipts, etc.)
- ☐ Amount of Investment represented: \$ \_\_\_\_\_

Equipment – Verification of (\*New) Investment

- ☐ Invoices (attached)
- ☐ Transaction verification (copies of checks, receipts, etc.)
- ☐ Amount of Investment represented: \$ \_\_\_\_\_

Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_

\* Typically, to be considered eligible for credit warranting access funding, investment should be established no earlier than 6 months prior to the local government’s resolution requesting access funding.